

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX REFERENCE NO. 45 OF 1990.

The Commissioner of Income-tax,
Pune.

... Applicant.

V/s.

Jaya Hind Industries Employees
Welfare Fund Trust, Pune.

.. Respondent.

Shri Ashok Kotangale, Senior Counsel i/b K.C.
Sidhwa for the applicant.

Shri Pradeep Vaidya i/b S.N. Inamdar for the
respondents.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 13th July 2005.

P.C. :

. By this reference under section 256 of the
Income-tax Act, 1961, the Income Tax Appellate
Tribunal has referred the following questions of law
for the opinion of this Court:

1. Whether, on the facts and in the
circumstances of the case, and in view
of the fact that the settlor of the
assessee trust is the employer company
and some of the trustees were the
Directors of the Company having full
control and discretion of the funds of
the trusts and the funds are to be
invested in the manner decided by the

settlor company, and thus the trust will remain in existence so long as the settlor company remains in existence, the Tribunal was justified in law in holding that the trusts created by the employer company was not void and against the rule of perpetuity?

2. Whether, on the facts and in the case and in the circumstances of the case the Tribunal was justified in law in holdidng that the assessee trust is to be taxed at the ordinary rate of taxes laid down in the Finance Act in respect of Association of Persons when in fact the assessee is a private discretionary trust, the income of the beneficiaries being indeterminable and unknown and thus not falling under item (iv) of the proviso to section 164(1) of the Income-tax Act, 1961?

. For the reasons recorded by us in our judgment dated 1st July 2005 passed in Income Tax Reference No.397 of 1988 (**C.I.T. vs. M/s Pithwa Engg.Works**), wherein we have relied upon decision of this Court in the case of **C.I.T. vs. Camco Colour Co.** (2002) 254 ITR 565, we do not think it necessary to answer the reference made to this Court for the Assessment Year 1981-82, having negligible

tax effect. Accordingly, reference stands returned
unanswered with no order as to costs.

(A.S.AGUIAR, J.)

(V.C.DAGA, J.)